



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding West Kootenay Rental & Property Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, OPR, MNSD, FF, CNC, CNR, MNDC, MT

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant, and one brought by the landlord(s). Both files were to be heard together, however the tenant did not join the conference call that was scheduled for the hearing and therefore the tenant's application has been dismissed.

The landlord's application is a request for an Order of Possession based on a Notice to End Tenancy for nonpayment of rent, a request for a Monetary Order for \$2400.00 and recovery of the \$50.00 filing fee, and a request to retain the full \$600.00 security deposit towards the claim.

Some documentary evidence and written arguments have been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally.

All parties were affirmed

Issue(s) to be Decided

At the beginning of the conference call, the landlords stated that tenants have vacated the rental unit and they now have possession of the unit, and therefore an Order of Possession is no longer required. Therefore the issue I dealt with today is whether or not the landlords have established monetary claim against the tenants, and if so in what amount.

Background and Evidence

The landlords testified that this tenancy began on May 1, 2015 with a monthly rent of \$1200.00 and that a security deposit of \$600.00 was transferred to that rental unit on that date.

The landlords further stated that the only person on the tenancy agreement was the person above whose initials are K.K., but that she brought in a roommate whose initials are D.M.,

however no tenancy agreement was ever signed with the roommate, although the roommates rent was paid directly to the landlord.

The landlords further testified that the tenants failed to pay the full December 2015 rent and therefore on December 2, 2015 the tenants were served with a 10 day Notice to End Tenancy which named both K.K. and D.M..

Landlords further testified that K.K. vacated the rental unit however D.M. refused to do so and therefore they filed a Direct Request application to get an Order of Possession to have her removed.

The landlords further testified that their Direct Request application was not accepted because D.M. had filed a dispute of their Notice to End Tenancy and therefore their file was sent to a participatory hearing.

As stated above the landlords testified that they no longer need an Order of Possession as the final tenant vacated on January 24, 2016; however they are requesting a Monetary Order be issued against the tenants in the following amount:

December 2015 rent outstanding	\$600.00
January 2016 rent outstanding	\$1200.00
Filing fee	\$50.00
Total	\$1850.00

The landlords further request an Order allowing them to retain the full security deposit of \$600.00 towards the claim.

Analysis

Policy guideline number 13 clearly states the definition of the tenant as follows:

A tenant is the person who has signed a tenancy agreement to rent residential premises. If there is no written agreement, the person who made an oral agreement to rent the premises and pay the rent is the tenant.

Policy guideline number 13 also clearly states the definition of an occupant as follows:

Where a tenant allows a person who is not a tenant to move into the premises and share the rent, the new occupant has no rights or obligations under the tenancy agreement, unless all parties agree to enter into a tenancy agreement to include the new occupant as a tenant.

In this case there is a signed agreement, and the person who signed the agreement is the person whose initials are K.K. and therefore she is the one that is bound by the obligations of the tenancy agreement.

In this case the person whose initials are D.M. is simply an occupant who shared the rent as the parties did not enter into an agreement to include the new occupant as a tenant, and therefore D.M. has no rights or obligations in this tenancy.

At the hearing I informed the landlords that I would therefore only be issuing a Monetary Order against the party whose initials are K.K. as she is the only one of the two respondents who has any obligations under the tenancy agreement. When the landlords were informed of this they vehemently argued that D.M. should be considered a tenant as she had paid a portion of the rent, however I pointed out that simply paying a portion of the rent (it makes no difference whether the rent came from the ministry or from the tenant directly), does not make her a tenant, (as is clearly outlined in policy guideline number 13.)

When I refuse to include D.M. as a tenant the landlord got even more insistent and stated that if she was not a tenant the Residential Tenancy Branch should not have accepted her application for dispute resolution and denied his request for a Direct Request application; however it was the landlords themselves that put D.M.'s name down as a tenant on both the Notice to End Tenancy, and the Direct Request application, and therefore I fail to see how the Residential Tenancy Branch would have known, when D.M. filed her application, that she was not a tenant.

As stated above the landlords had served the Notice to End Tenancy on the tenants listing D.M. as the tenant and therefore D.M. had the right to file a dispute of that notice pursuant to section 46(4)(b) of the Residential Tenancy Act which states:

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

- (4) Within 5 days after receiving a notice under this section, the tenant may
 - (a) pay the overdue rent, in which case the notice has no effect, or
 - (b) dispute the notice by making an application for dispute resolution.

The error in this case was not the Residential Tenancy Branch's error it was the landlord's error for listing D.M. on the Notice to End Tenancy when she was, in fact, not a tenant, had they only listed K.K. on the notice it is likely that their request for Direct Request would have proceeded, as K.K. did not file any dispute of the notice.

That having been said, it is my finding that the actual tenant, who's initials are K.K., did have an obligation to provide vacant possession to the landlords, and ensure that her roommate moved

out, and, since she failed to do so, she is liable for the outstanding rent for both the months of December 2015, and January 2016 for a total of \$1800.00.

It's also my decision that the respondent whose initials are K.K. is also liable for the \$50.00 cost of the filing fee

Conclusion

As stated above an Order of Possession is no longer required as the landlords have possession of the rental unit.

I have allowed the landlords full claim of \$1850.00 and I therefore Order that the landlords may retain the full security deposit of \$600.00, and I have issued a Monetary Order in the amount of \$1250.00 against the tenant whose initials are K.K..

Also as stated above the application filed by D.M. is dismissed without leave to reapply.

(Just as a note: I want to state that although I attempted to clearly explain my decision to the Landlords, about removing D.M. as a tenant, they kept trying to argue the point and as it was obvious that no resolution would be found I eventually had to end the call and disconnect the parties.)

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 28, 2016

Residential Tenancy Branch

